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April 4, 2005

Via Hand Delivery


Pat Miller, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

Re: Motion to Strike Petition of TWS to Intervene

Dear Chairman Miller:

King's Chapel Capacity filed a Petition for a Declaratory Ruling Regarding the Assignment of Wastewater Service Territory to Private Utilities in Tennessee. Tennessee Wastewater, Inc. has filed a Petition to Intervene. Please accept the attached Motion to Strike that Petition to Intervene.

Sincerely,
MILITANA & MILITANA


Richard Militana, Esq.

RM/dkm
Enclosures

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:

PETITION OF KING'S CHAPEL
CAPACITY, LLC., FOR A DECLARATORY
RULING REGARDING THE ASSIGNMENT
OF WASTEWATER SERVICE TERRITORY
TO PRIVATE UTILITIES IN TENNESSEE

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DOCKET NO. 05- 00062

MOTION TO STRIKE PETITION FOR A DECLARATORY RULING

Comes now, King's Chapel Capacity, LLC., ("KCC" or "Company") and respectfully requests that the Tennessee Regulatory Authority ("TRA" or "Authority") strike Tennessee Wastewater, Inc.'s Motion to Intervene and as grounds therefore state as follows:

1. KCC petitioned the TRA to issue a declaratory order pursuant to T.C.A. § 65-2-104, T.C.A. § 4-5-223 and TRA Rule 1220-1-2-.06
2. TWS lacks standing and authority to intervene and/or object to a Petition for Declaratory Relief. The law is clear that "*No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for* " See Tennessee Code TITLE 29 REMEDIES AND SPECIAL PROCEEDINGS CHAPTER 14 DECLARATORY JUDGMENTS, set out in relevant part with emphasis added:

T.C.A. § 29-14-102. General power of courts.

(a) Courts of record within their respective jurisdictions have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.

(b) No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for.

3. The Motion to Intervene by TWS is also factually insufficient in that the Petition to Intervene fails to satisfy the minimum requirements of Rule 1220-1-2-.08 captioned "INTERVENTION". Specifically, the Motion to Intervene contains only conclusions regarding its legal rights, duties, privileges, immunities or other legal interests, without "setting forth with particularity those facts that demonstrate that the petitioner's legal rights, duties, privileges, immunities or other legal interests may be determined in the proceeding as required by Rule 1220-1-2-.08. Additionally, TWS has failed to cite any provision of law that would qualify TWS as an intervenor in a Petition seeking declaratory relief. TWS has only cited section **1220-1-2-.08** which itself requires "particular facts" not bare conclusions void of factual basis, to support its Motion to Intervene. Rule 1220-1-2-.08 is set out below in relevant part with emphasis added:

(1) Petitions for intervention shall be granted in accordance with T.C.A. § 4-5-310 and T.C.A. § 65-2-107.

(2) A petition for intervention shall set forth with particularity those facts that demonstrate that the petitioner's legal rights, duties, privileges, immunities or other legal interests may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law. Intervention may be denied or delayed for failure to provide such specific facts.

4. Declaratory Rulings are not subject to objection under T.C.A. § 29-14-102. Notwithstanding, TWS has failed to set forth any facts whatsoever, let alone with particularity, "that demonstrate that the petitioner's legal rights, duties, privileges, immunities or other legal interests may be affected or that the petitioner qualifies as an intervenor under any provision of law, leaving the TRA without any factual grounds to grant the Intervention and renders any

response to the Petition to Intervene impossible save only this motion to strike for the reasons aforementioned.

5. Finally, TWS has not asserted any position in its Petition to Intervene which is inconsistent with the requests in and/or in conflict with the Petition for Declaratory Relief filed herein and therefore, the Petition to Intervene can operate as an endorsement for the need for the declaratory relief sought.

6. The failure of TWS to abide by the laws, rules and regulations regarding Intervention in this Declaratory proceeding are legally, procedurally and substantively insufficient and negatively impact on the rights of KCC to seek a declaratory ruling. TWS now improperly attempts to appeal the Sevier County TRA final order by intervention and not by an appeal which it elected not to take when it would have been more appropriate. The attempted appeal by intervention is improper.

7. TWS, in violating the rules and laws governing Declaratory Rulings has rendered any response to their Motion to Intervene, outside of a Motion to Strike, impossible and for the TRA to permit the fatally defective Petition to Intervene to stand would be contrary to the law, TRA's own rules and regulations and negatively impact upon KCC's rights to seek declaratory relief.

8. KCC would further assert that it, through its counsel, was not provided with any notice of the hearing on the Petition to Intervene as required by Rule **1220-1-2-.14 NOTICE OF HEARING.**

Rule 1220-1-2-.14


(1) Except as may be otherwise provided by statute or by these rules, the Executive Secretary shall give all parties reasonable notice of any pre-hearing conference or any hearing to be held for the disposition of any preliminary motion.

9. For the forgoing reasons the Petition to Intervene must be stricken by this Agency in compliance with the rules and laws pertaining thereto.

Wherefore, KCC respectfully prays that the Authority strike the Petition to Intervene as legally, factually, substantively and procedurally insufficient.

Respectfully submitted this 4th day of April 2005.

MILITANA & MILITANA

By: 
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CERTIFICATE OF SERVICE

The undersigned hereby certified that the foregoing document has been served upon the following person/s by hand delivery and/or facsimile and/or by United States Mail, with proper postage thereon and by facsimile.

Henry Walker, Esquire
Boult, Cummings, Conners & Berry, PLC
414 Union Street, Suite 1600
P.O. Box Nashville, Tennessee 37219

This 4th day of April, 2005.


Richard Militana